

## Appendix E to DIR Contract No. DIR-SDD-2099

### SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

THIS SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_ between Periscope Holdings, Inc., a corporation formed under the laws of the State of Delaware, with its principal offices at 211 East 7<sup>th</sup> Street, Suite 1100, Austin, Texas 78701, and \_\_\_\_\_ ("Licensee"), with its principal place of business at \_\_\_\_\_.

WHEREAS, Licensee desires to procure software maintenance and support services from Periscope from time to time; and

WHEREAS, Periscope desires to provide such services to Licensee on the terms set forth below;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Periscope and Licensee agree as follows:

#### **1. Maintenance and Support Services.**

- 1.1 Definitions in the Software License Agreement ("SLA") apply herein. Periscope shall provide for Licensee remedial and preventative maintenance services ("Maintenance Services") to keep the most current release of the Licensed Software Product(s) specified in the Software License Agreement in good operating condition.
- 1.2 Periscope will provide available telephone support to Licensee between 8:00 a.m. and 5:00 p.m. CST, Monday through Friday, excluding Periscope-recognized company holidays, which are limited to the following: New Year's Day; Memorial Day; July 4; Labor Day; Thanksgiving; Friday after Thanksgiving; Christmas Eve; and Christmas. When holiday falls on a Saturday, Friday is the holiday. When holiday falls on a Sunday, Monday is the holiday. Periscope will consult with Licensee for a reasonable amount of time by telephone to assist Licensee in the use of the Software.
- 1.3 Periscope will provide appropriate assistance to Licensee within a reasonable period after Licensee adequately describes a Licensed Software Product and/or Documentation problem to Periscope's Licensee Support Group. Such assistance will be at Periscope's expense where it determines that the reported problem is due to defects in an unaltered, most current version of a Licensed Software Product or its Documentation. If Periscope determines that the reported problem is not due to a Licensed Software Product or Documentation defect, and if Licensee requests and Periscope agrees to provide the requested service, Licensee agrees to pay Periscope's then current prices for services Periscope provides to resolve the problem.
- 1.4 Periscope will provide Licensee with all versioned upgrades to the Licensed Software Product, which are developed and made available at no charge to other Licensees during the maintenance period.
- 1.5 Periscope will support and maintain the Licensed Software Product and Custom Enhancements as permitted under the SLA. If Licensee makes modifications, interfaces, and/or other changes to the Licensed Software Product and/or Documentation not permitted under the SLA, Periscope cannot guarantee support.

- 1.6 Periscope's obligation to provide Maintenance and Support Services pursuant to this agreement is dependent upon:
- (i) The existence of a valid SLA in effect between Periscope and Licensee;
  - (ii) Licensee's continued good repair of the Designated Equipment; and
  - (iii) The performance by Licensee of all of its obligations as set forth in the SLA and in this agreement.
  - (iv) Proper training of Authorized Users
- 1.7 Periscope shall not be obligated to provide Maintenance and Support Services pursuant to this Agreement that are required by any of the following:
- (i) Abuse, misuse, accident, neglect; or
  - (ii) Repairs, alterations, and/or modifications which are not permitted under the SLA and which are not performed by Periscope or its agents; or
  - (iii) Use of materials not meeting Periscope's requirements;
  - (iv) Use of the Licensed Software Product for other than the intended purpose for which licensed and designated; or
  - (v) Malfunction, modification, or relocation of the Designated Equipment from the Designated Sites; or
  - (vi) Where inadequate backups are supplied.
- 1.8 Periscope may refuse to provide Maintenance and Support Services where, in Periscope's opinion, a condition exists that represents a hazard to the safety of its employees or agents.

## **2. Initial Term; Commencement; Renewal.**

- 2.1 **This Agreement is intended to commence at the time of delivery of the related Licensed Software Product(s). Therefore, Maintenance and Support Services shall commence on the first business day following software installation, or ninety (90) days after delivery of the Licensed Software Product, whichever shall occur first,** subject to the approval of Periscope and payment in advance of any applicable fee(s). This Agreement shall have an initial term of one (1) year, and may be renewed for successive twelve (12) month periods with thirty (30) days prior written notice from the Customer. Maintenance and Support Services renewal is contingent on current payment of fees, Licensee not being in default hereunder or under the SLA, and a valid Licensee purchase order.
- 2.2 If Maintenance and Support Services have terminated because of non-renewal or non-payment, and Licensee desires to reinstate Services, Periscope will reinstate such Services within 24 (twenty-four) months after termination of Maintenance and Support Services only after completion of all of the following:
- (i) An evaluation by Periscope of Licensee's current status and, if necessary, updating of the Licensed Software Product(s) to a serviceable revision; and

- (ii) Licensee pays Periscope: (a) all undisputed invoices, (b) the annual Maintenance and Support Services fee for the next one year period, and (c) if Maintenance and Support Services have been terminated for more than 60 (sixty) days, a "Reinstatement Fee" equal to 2% of the then current list price for the Licensed Software Product(s) for each month not under Maintenance and Support Services.

### **3. Prices and Terms of Payment**

- 3.1 The prices, discounted at rates set forth in Appendix C of the DIR Contract No. DIR-SDD-2099, set forth in the Product Quotation, Arrangement Letter or Statement of Work apply to the initial term. Periscope will advise Licensee at least thirty (30) days prior to the expiration of a term of the prices applicable to the subsequent term. Invoicing and Payment shall be in accordance with Section 6.B. and 6.C. of Appendix A of the DIR Contract No. DIR-SDD-2099.

### **4. Additional Services**

- 4.1 If Periscope agrees to perform services requested by Licensee, which are not included as a part of this Agreement, such services shall be billed to Licensee at prices and terms determined by Periscope in accordance with Appendix F to the DIR Contract No. DIR-SDD-2099, Service Agreement.

### **5. Updates and New Products**

- 5.1 Updates, consisting of one copy of modifications and improvements to each Licensed Software Product and/or Documentation, which are provided to other licensees of the Licensed Software Product and which Periscope determines are required to achieve the specifications published by Periscope for the Licensed Software Product and/or Documentation will be provided at no additional cost. Licensee acknowledges that Periscope will maintain only the most current version of the Licensed Software Product. Periscope shall maintain prior versions until the earlier of six (6) months from the release of each new versioned release, or termination of this agreement. New products are determined and defined solely by Periscope and are not covered by fees already paid by Licensee.

### **6. Excluded Services**

- 6.1 Hardware, hardware maintenance, services connected with relocation of the Licensed Software Product from the Designated Equipment or reconfiguration of same or Licensee-induced problems associated with the Designated Equipment are excluded. The cost of tools, supplies, accessories, media, and other expendables required by Periscope to perform the Maintenance Services are excluded.

### **7. Licensee Responsibilities**

- 7.1 Licensee shall:
  - (i) Notify Periscope promptly by telephone or email of Licensed Software Product problems and provide follow-up reports in writing. Periscope will confirm receipt of any electronic problem notification within twenty-four (24) hours of receipt and, in the absence of such a confirmation, Licensee shall promptly re-transmit such report;

- (ii) Allow Periscope full and unrestricted access to all Designated Equipment at the Designated Sites and other communication facilities and provide Periscope reasonable workspace and storage and other normal and customary facilities;
- (iii) Provide Periscope with reasonable assistance as requested and insure that an employee of Licensee is present during Service;
- (iv) Provide sufficient support and test time on Licensee's computer system to duplicate the problem, certify that the problem is due to the Licensed Software Product and, when repairs are complete, certify that the problem has been repaired;
- (v) Provide sufficient data to Periscope to reproduce the problem on another computer at Periscope's Licensee support center. Periscope will retain a copy of the data to use for validation of future releases of Periscope Products unless specifically directed not to do so in writing by Licensee.

## **8. Relocation of Designated Equipment**

- 8.1 Licensee shall notify Periscope in writing not more than thirty (30) days prior to moving the Designated Equipment from the Designated Sites as to its intended new location. Periscope shall be under no obligation to provide any services under this Agreement during or as a result of such relocation.

## **9. Termination**

- 9.1 Termination shall be in accordance with Section 9.B. of Appendix A of the DIR Contract No. DIR-SDD-2099.

## **10. Assignment**

- 10.1 Assignment shall be in accordance with Section 3.D. of Appendix A of the DIR Contract No. DIR-SDD-2099.

## **11. Warranty**

- 11.1 IN CONNECTION WITH THE SERVICES RENDERED AND COMPUTER SOFTWARE AND DOCUMENTATION SUPPLIED UNDER THIS AGREEMENT, PERISCOPE MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY OR OF NON-INFRINGEMENT.

## **12. Liability**

- 12.1 PERISCOPE'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT FOR ALL CAUSES OF ACTION SHALL BE LIMITED TO AND NOT EXCEED THE MAINTENANCE AND SUPPORT SERVICES FEE PAID BY LICENSEE, REGARDLESS OF WHETHER PERISCOPE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THAT ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE PERISCOPE SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, LOSS OF PROFITS,

INTERRUPTION OF BUSINESS, OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. LICENSEE ACKNOWLEDGES THAT THE MAINTENANCE AND SUPPORT FEE REFLECTS THIS ALLOCATION OF RISK.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**Periscope Holdings, Inc.**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**LICENSEE (Customer):**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_